



# MIAMI BEACH

OFFICE OF THE CITY MANAGER

LTC # 193-2006

## LETTER TO COMMISSION

TO: Mayor David Dermer and Members of the City Commission  
FROM: Jorge M. Gonzalez, City Manager  
DATE: July 31, 2006  
SUBJECT: **Update - 7346 and 7354 Gary Avenue – Private Easement**

RECEIVED  
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CITY CLERK'S OFFICE

On June 20, 2005 a complaint regarding a fence and gate located across a walkway from Gary Avenue to the Indian Creek Waterway on Parkview Island was received by Better Place as Request # 329687. The complainant alleged that the gate and fence precluded access to the waterway for properties immediately adjacent to the two addresses noted above and that the fence was non-compliant with an existing water access easement granted to the adjacent properties. The fence and gate were installed in 2002 pursuant to a Building Permit that was finalized and closed out that year.

The complainant alleged that the Building Permit for the fence and gate should not have been issued due to the existence of the private access easement and requested that the permit be rescinded and the fence and gate ordered removed by the City.

The majority of the fence and gate constructed (approximately 50 feet) under the permit is located on the property located at 7354 Gary Avenue. In order for the fence/gate to be effective, it needed to connect to the property located at 7346 Gary Avenue. Approximately three (3) feet of fence was constructed on the property located at 7346 Gary Avenue. The property at 7346 Gary Avenue is owned by a City of Miami Beach police detective. The complainant alleged that this employee received preferential treatment in this matter based on the employment status.

The issue was aired by local Fox network WSVN in a segment called "That's Just Wrong" on March 2, 2006.

The issuance of the Building Permit has been reviewed by the City departments involved, including Building, Planning, Public Works, and Fire, as well as the City Attorney's Office. The following information was considered.

The City was recently provided a copy of a private access easement from the property owners that abut or adjoin 7354 and 7346 Gary Avenue that was executed on October 1, 1956 by the Parkview Island Corporation (attached). This access easement provides a right of access to the property owners of Lot 14, Block 1, which consists of four subdivided units including 7346 Gary Avenue, where 7346 Gary is the end unit that abuts the Indian Creek Waterway (see attached sketch). It should be noted that this is a private access easement that provides a right of access only to the four unit owners of Lot 14, Block 1.

The private access easement is located on private property. The access easement belongs to the owners of units located at Lot 14, Block 1 only. The fence and gate were installed by one of those owners and the owner of the property abutting the easement on the north side, who is the adjoining property owner. The "water front area" referred to in the private access



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easement is also on private property. The private property owners that own the property upon which the fence and gate sit are the persons that pulled the building permits. Neither property owner advised the City of the existence of the private easement nor did the construction documents or survey reflect the easement either. The City, and its reviewing departments, issued the permit in 2002 since they had no way of knowing of the existence of the private easement.

Staff reviewed the private easement and the process involved with the issuance of the original permit. It was determined that had we known of the private easement at the time of the original permit review, then the permit would not have been issued. Pursuant to this finding, the Building Department revoked the permit and issued violations to the property owners of 7346 and 7354 Gary Avenue directing them to remove the gate on April 13, 2006. The property owners were provided 90 days to comply and both verbally indicated that they intended to correct the situation.

A follow-up inspection was performed by the Building Department on July 27, 2006 and the gate has not been removed. The Building Department is in the process of referring the issue to Special Master for further enforcement.

There is no evidence to support any allegation of special treatment to a City employee in this matter.

Please feel free to contact me, or Assistant City Manager Tim Hemstreet, if you have any questions or concerns regarding this issue.

#### Attachments

C: Donald DeLucca, Police Chief  
Fred Beckmann, Public Works Director  
Jorge Gomez, Planning Director  
Tom Velazquez, Building Official

**PARTIAL**

KNOW ALL MEN BY THESE PRESENTS,

WHEREAS, PARK VIEW ISLAND CORPORATION, a Florida corporation, is the owner of Lot 14, Block 1, PARK VIEW ISLAND, according to the plat thereof, recorded in Plat Book 60, at Page 6, of the Public Records of Dade County, Florida, together with all riparian rights adjacent thereto, and has constructed a building thereon containing four individual and self-contained dwelling units; and all references hereinafter contained to "the building" mean the building just herein referred to; and

WHEREAS, PARK VIEW ISLAND CORPORATION desires to create the easements hereinafter set forth over and across Lot 14, Block 1, PARK VIEW ISLAND SUBDIVISION, for the use and benefit of the owners and occupants of the dwelling unit contained in the building:

NOW, THEREFORE, PARK VIEW ISLAND CORPORATION, a Florida corporation, does hereby create an easement over and across the following property, to wit:

- 1) A strip of land 7 feet wide adjacent to and parallel to the northeasterly line of Lot 14, Block 1, of said PARK VIEW ISLAND SUBDIVISION; which property will hereinafter be referred to as "the parking area"; and
- 2) A strip of land 2 feet in width adjacent to and parallel with the northwesterly boundary line of Lot 14, Block 1 of said PARK VIEW ISLAND SUBDIVISION and a strip of land 4 feet in width adjacent to and parallel with the southeasterly boundary line of Lot 14, Block 1, of said PARK VIEW ISLAND SUBDIVISION; which property will hereinafter be referred to as "the ingress and egress area"; and
- 3) That portion of Lot 14, Block 1 of said PARK VIEW ISLAND SUBDIVISION, described as follows:

The southeasterly line of which is 13.9 feet southeasterly of and parallel to the northwesterly line of said Lot 14. The northwesterly line of which is 2.0 feet southeasterly of and parallel to the northwesterly line of said Lot 14. The northeasterly line of which is 10.0 feet northeasterly of and parallel to the southwesterly line of said Lot 14. The southwesterly line of which is the southwesterly line of said Lot 14, Block 1, or the northeasterly line of Indian Creek; which property will hereinafter be referred to as "the water front area";

for use and benefit of the owners and occupants of the dwelling units contained in the building, though subject to the terms and conditions hereinafter set forth.



The easement covering a strip of land 7 feet wide adjacent and parallel to the northeasterly line of Lot 14, Block 1 of said PARK VIEW ISLAND SUBDIVISION, shall be used only by the owners and occupants of the dwelling units in the building for the parking of cars thereon; but the owner or occupant of each dwelling unit shall be limited to park one car in the aforesaid area; and PARK VIEW ISLAND CORPORATION will designate the particular parking space for each dwelling unit, and thereafter the owner and occupant of each dwelling unit will be limited to the use of the area designated for the particular dwelling unit.

The easement covering a strip of land 2 feet in width adjacent to and parallel with the northwesterly boundary line of Lot 14, Block 1 of said PARK VIEW ISLAND SUBDIVISION and the strip of land 4 feet in width adjacent to and parallel with the southeasterly boundary line of Lot 14, Block 1, PARK VIEW ISLAND, shall be used in common by the owners and occupants of the dwelling units in the building, and their invitees, guests and licensees, for ingress to and egress from the building and/or "the water front area".

The easement covering "the water front area" shall be used in common by the owners and occupants of dwelling units in the building which do not front on or face the canal.

IN WITNESS WHEREOF, PARK VIEW ISLAND CORPORATION, a Florida corporation, has caused these presents to be executed by its proper officers who are thereunto duly authorized and its corporate seal to be affixed, all of which has been done at Miami, Dade County, Florida, this 1 day of October, 1956.

WITNESSES:

Mary C. Osterloh

Lara Hamilton

PARK VIEW ISLAND CORPORATION (SEAL)

BY Robert M. Chusling  
Its President

ATTEST:

Frieda Mintzer  
Its Secretary

STATE OF FLORIDA)  
COUNTY OF DADE ) SS:

BEFORE ME, THE UNDERSIGNED AUTHORITY, personally appeared  
ETHEL MINTNER CHESLING and FRIDA MINTNER, President and Secretary,  
respectively, of PARK VIEW ISLAND CORPORATION, a Florida corporation,  
to me known to be the persons described in and who executed the foregoing  
instrument and they acknowledged the execution thereof to be their free  
act and deed as such officers for the uses and purposes therein mentioned  
and that they affixed thereto the official seal of said corporation,  
and that the said instrument is the act and deed of said corporation.

WITNESS, my signature and official seal at Miami, in  
said County and State, this 1 day of October, 1956.

*Mary O. Osterloh* (SEAL)  
Notary Public  
State of Florida at Large

My commission expires:

Notary Public, State of Florida at Large  
My commission expires Aug. 25, 1959

STATE OF FLORIDA, COUNTY OF DADE  
I HEREBY CERTIFY that the foregoing is a true and correct copy of the  
original on file in this office. 06/08 402025  
HARVEY RUVIN, CLERK, of Circuit and County Courts

Deputy Clerk *Harvey Ruvins*



State of Florida, County of Dade.

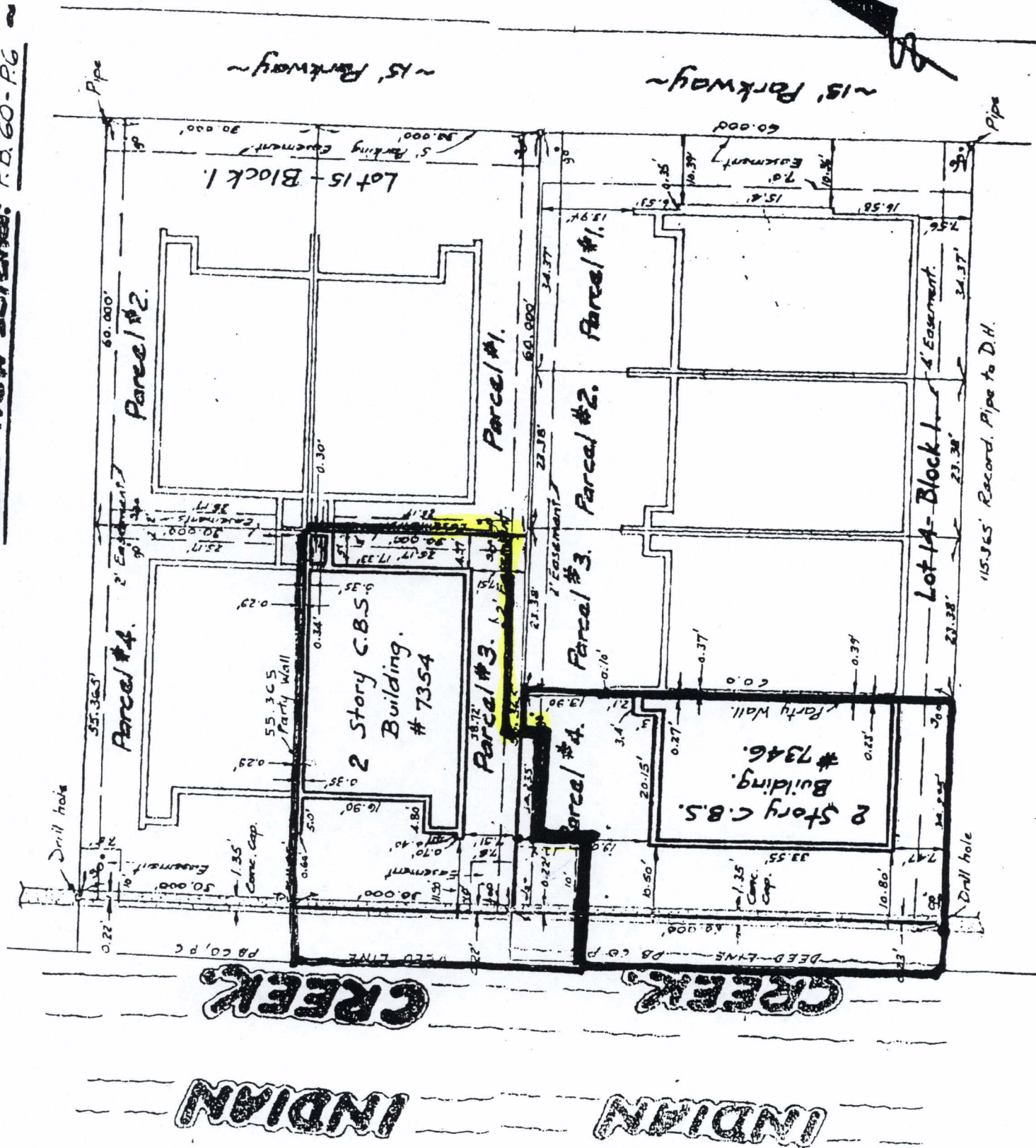
This instrument was filed for record the 12 day of Dec  
1956 at 1:32 P.M. and duly recorded in Book  
Book 4345 on Page 86 File No. 153617

E. S. LEATHERMAN  
Clerk Circuit Court

*E. S. Leatherman*



Park View Island: P.B. 60-P. 6







04/12/2006





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